IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 17996 of 2007(P)

PETITIONER:

M.J.THOMAS, TEA GARDEN AGENCIES,
K.D.H.VILLAGE, MUNNAR, DIST. IDUKKI.

BY ADV. SRI.K.REGHU KOTTAPPURAM
SMT.URSULA FRANCIS
SRI.M.MUKESH

RESPONDENTS:
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1. **THE MUNNAR GRAMA PANCHAYATH REPRESENTED BY THE SECRETARY, MUNNAR, DIST. IDUKKI.**

2. **THE SECRETARY, KERALA LAND BOARD, THIRUVANANTHAPURAM.**

3. **STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO GOVT., GOVT. SECRETARIAT, THIRUVANANTHAPURAM.**

4. **THE ADDITIONAL TAHASILDAR, DEVIKULAM TALUK, DIST. IDUKKI.**

5. **MR.RAJU NARAYANA SWAMY, DISTRICT COLLECTOR ON DEPUTATION TO MUNNAR ENCROACHMENT EVICTION TASK FORCE, MUNNAR, DIST. IDUKKI.**

6. **MR.K.SURESH KUMAR, SECRETARY TO GOVT., ON DEPUTATION AS SPECIAL OFFICER TO MUNNAR ENCROACHMENT EVICTION TASK FORCE, MUNNAR, DIST. IDUKKI.**

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7. MR.RISHI RAJ SINGH,
INSPECTOR GENERAL OF POLICE,
ON DEPUTATION TO MUNNAR
ENCROACHMENT EVICTION TASK FORCE, MUNNAR, DIST. IDUKKI.

8. C.A.CHACKO, S/O.ABRAHAM,
ANAPRAMBAL CHOLAKATHU DEEPTHIYIL,
THALAVADI VILLAGE, KUTTANAD TALUK, ALLEPPEY DISTRICT.

BY ADV. SMT.AYSHA YOUSEFF, SC, MUNNAR GRAMA PANCHAYATH
SMT.MOLLY JACOB, SC, MUNNAR G.PANCHAYAT
BY GOVERNMENT PLEADER SRI. D. ANILKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/06/2007 ALONG WITH WPC NO. 17858 OF 2007 AND WPC NO. 18283 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. BALAKRISHNAN NAIR, J.

W.P.(C) No.17996, 17858 &
18283 of 2007

Dated this the 25th June, 2007.

JUDGMENT

W.P.(C) No.17996 of 2007

The petitioner is in possession of 2.5 cents of land in Sy.No.61/16 of Kannan Devan Hills Village. He has constructed a building therein. Petitioner traces his title to Ext.P5, under which ten cents of land was transferred by Kannan Devan Hills Produce Company Ltd., in favour of one C.A.Chacko. The 2.5 cents in question changed several hands and now the petitioner is in possession of it. While so, he has been served with Ext.P11 proceedings by the Additional Tahsildar, Devicolam, stating that the building is constructed within 50 yards of Munnar river and, therefore, the same is covered by the directions of this Court in the judgment in O.P.551 of 1995. So, the petitioner has been informed that the notice in Form B under Section 12 of the Kerala Land Conservancy Act, 1957 would be issued to him. Ext.P12 is the notice in Form B, dated 7.6.2007. Petitioner submitted his objections, Ext.P13 to Exts.P11 and P12 and, thereafter,

this writ petition has been filed, seeking to quash Exts.P11 and P12. Other incidental reliefs are also sought for.

2. The petitioner submits that the 2.5 cents of land in his possession is exempted u/s.3(2)(b) of the Kannan Devan Hills (Resumption of Lands) Act, 1971. He also relies on Ext.P6 award of the Land, Board, which notices the possession of ten cents of land by his predecessor-in-interest, Mr.C.A. Chacko. So, he claims that he is entitled for assignment of the said land. It is further submitted that the land in question is not covered by the Kerala Land Conservancy Act. Therefore, the action proposed under Section 12 of the said Act and Rule 9 is untenable. It is also pointed out that Ext.P11 is passed without notice to him.

3. Heard the learned Government Pleader. The Government Pleader submitted that though the judgment in O.P.551 of 1995 has been reversed to a certain extent by the Division Bench of this Court; but that appellate judgment has been stayed by the Apex Court. Therefore, it should be taken that the judgment in the original petition is now remaining in force. As per the judgment,

the authorities are bound to remove all constructions made within 50 yards of Munnar river. So, the impugned action is justified, it is submitted.

4. It is common case that Ext.P11 is issued without notice. Therefore, it shall be treated as a notice only. The petitioner has already filed his objections. He has also challenged the very jurisdiction of the Additional Tahsildar, in issuing Exts.P11 and P12. The said official shall afford an opportunity of being heard to the petitioner and pass final orders in the matter. If the decision is against the petitioner, it is only proper that the officials await for the outcome of the case before the Supreme Court, before taking further action. The written instructions given to the learned Government Pleader by the Government is also in tune with the said view. If the building is now demolished and finally the State's appeal is dismissed by the Hon'ble Supreme Court, irreparable injury will be caused to the petitioner. So, even if the decision of the 4th respondent is against the petitioner, further action shall be taken against the petitioner only after the Hon'ble Supreme Court finally disposes of the matter, in which the

judgment dated 9.11.2006 in W.A.No.448 of 2001 and connected cases are under challenge.

5. The petitioner shall not make any further construction or modify the existing building, until the decision of the Apex Court. The claim of the petitioner for assignment of land and other consequential reliefs sought for are left open. For those reliefs he can resort to the remedies available to him under the relevant statutes.

W.P.(C) No.17858 &18283 of 2007

6. The petitioners in these writ petitions are transferees of small plots of land, admeasuring 12 cents and 10 cents respectively and the transfer was made by registered sale deeds in their favour, executed by the Kannan Devan Hills Produce Company or their successor-in-interest. The illegality alleged against the petitioners is that they have constructed buildings within 50 yards of Munnar river. The facts of these cases are identical to those in W.P.(C) 17996 of 2007. So, the decision rendered in W.P.(C) 17996 of 2007 will squarely apply to these cases also. All the directions issued in that case, like treating the proceedings of the Additional

Tahsildar, Devikulam, etc., will govern these cases also. Further action, if any, based on the decision of the Additional Tahsildar, shall be taken only after the decision of the Apex Court. The petitioners, in the meantime, shall not make any additional construction or modify the existing structures.

These writ petitions are disposed of as above.

K. BALAKRISHNAN NAIR,
JUDGE.

vav.